IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 163 OF 2003

Shri Anant Voikunth Bhandari
Voikunth Niwas, Dotor Bhat,
Ela Old Goa(Expired)
Through Legal Representatives:

1(a) Smt. Ashalata Bhandari

1(b) Shri Mahesh Bhandari

1(c) Smt. Aruna Mahesh Bhandari

1(d) Smt. Sandhya S. Bhandari

1(e) Shri Shyamsundar A. Bhandari

1(f) Smt. Suma S. Bhandari

All residing at Voikunth Niwas,
Dotor Bhat, Ela, Old Goa. … Appellants

versus

Special Land Acquisition Officer,
North Goa District(K.R.C.)
Panaji, Goa. ... Respondent

Mr. Valmiki Menezes, Advocate for the Appellants.

Mr. Emerico Afonso, Advocate for the Respondent.

CORAM : B. H. MARLAPALLE &
N. A. BRITTO, JJ.

DATE : 18TH OCTOBER, 2004.

ORAL JUDGMENT(PER N. A. BRITTO, J.)

The unsuccessful Applicant(since deceased and now represented by his legal representatives) has filed the present appeal against the Judgment/Award dated 17-10-2002 of the learned IInd Additional District Judge, Panaji, in L.A.C. No.199/96.

2. Some facts are required to be stated to dispose of this appeal.

3. By virtue of Notification issued under Section 4(1) of the Land Acquisition Act, 1894 and published in the Gazette dated 2-6-1991, the Government acquired about 486728 sq. meters of land in villages Ella and Carambolim for the purpose of construction of a new B G line between Roha and Mangalore.

4. The subject matter of L.A.C. No.199/96 regarding which there is no dispute was land admeasuring 573 sq. meters from survey no.103/1 and 8400 sq. meters from survey no. 104 belonging to the Applicant in Ella village.

5. By virtue of Award dated 3-1-1994, the L.A.O. awarded to the Applicant compensation at the rate of Rs.30/- per sq. meter for land under survey no. 103/1 and Rs.13/- per sq. meter for the land

under survey no.104 and as against the same, the Applicant sought enhancement at the rate of Rs.400/- per sq. meter which reference has been dismissed by the learned Additional District Judge.

6. Before the Reference Court and after the death of the Original Applicant, Applicant No.1(e) was examined. In support of his case for enhancement, the Applicant relied upon (a) opinion of an expert and (b) a Sale Deed dated 30-10-1991 in support of which A.W.3, Kashinath Mashelkar, was examined. Although, the learned Additional District Judge has referred to two Sale Deeds, the fact remains that no certified copy of Sale Deed dated 15-5-1984 was produced or exhibited in the said reference.

7. The learned Additional District Judge observed that mere production of sale transaction without adducing necessary evidence regarding the nature of the Sale Deed, plots, the distance from the acquired land and other factors required for comparison could not assist the Court in any manner to determine the market value of the acquired land and, therefore, proceeded to dismiss the reference.

8. Mr. Valmiki Menezes, the learned Counsel on behalf of the Appellants/Original Applicants has submitted that the Sale Deed dated 30-10-1991, which we are told is of a plot of land on the way to Karmali Station, could have been used to fix the market value of the acquired land.

9. We are not inclined to agree with him. After the death of the Original Applicant, his son A.W.1, Shamsundan Bhandari, has been examined and the evidence of both A.W.1, Shamsundan Bhandari as well as A.W.2, Subhashchandra Bhobe, Architect, gives a clear impression that both of them are not at all acquainted with the acquired land. For example, according to A.W.1, Shamsundan Bhandari, the acquired land is both from survey nos.103/1 and 103/2 but otherwise, it is an admitted position that the land of 626 sq. meters of survey no.103/2 was subject matter of another Notification dated 19-8-1992 regarding which no reference has been made on behalf of the Applicant. Further, according to A.W.1, Shamsundan Bhandari, the acquired land consisted of cashew trees, teak wood trees, coconut trees and bamboo clusters(islands) but according to A.W.2, Subhashchandra Bhobe, the acquired land was a coconut grove. A.W.1, Shamsundan Bhandari, stated that the acquired land is on the left side of the road as one proceeds from Ponda to Panaji but the plan Exh.15 shows that the acquired land is situated on the right side of the road as one comes from Ponda to Panaji. Again, A.W.1, Shamsundan Bhandari, stated that inbetween the road and the acquired land lies another property of theirs but the said plan shows that survey no.103/1 abuts the very same road and survey no.104 is situated further north to the same. It is to be noted that A.W.1, Shamsundan Bhandari, made no whisper regarding the Sale Deed dated 30-10-1991 regarding which A.W.3, Kashinath Mashelkar, was examined. Admittedly, this Sale Deed was a post Notification Sale

Deed and according to A.W.1, Shamsundan Bhandari himself, the new constructions which came up in the vicinity of the acquired land came up after the acquisition of the land and after the starting of the Konkan Railway. Being so, the sale instance dated 30-10-1991 certainly could not have been used as a guide for the purpose of fixing the market value of the acquired land, and, moreover as rightly observed by the learned Additional District Judge neither A.W.1, Shamsundan Bhandari nor A.W.3, Kashinath Mashelkar had mentioned the distances at which the land of the Sale Deed was situated in relation to the acquired land. It is not enough merely to produce a Sale Deed in support of a case for enhancement of compensation. It is also necessary that comparison between the acquired land and the land of the sale instance has to be shown to the satisfaction of the Court and in the absence of evidence of materials regarding comparison being brought on record, in our view, the learned Additional District Judge was right in not taking the said Sale Deed as a guide for the purpose of fixing the compensation payable to the Applicant.

10. As far as the opinion of A.W.2, Subhashchandra Bhobe, Architect, the least said would be better. In fact, both A.W.1, Shamsundan Bhandari as well as A.W.2, Subhashchandra Bhobe, were examined before the learned Additional District Judge twice and that itself showed that they were not acquainted with the facts pertaining to the said acquisition. In fact, A.W.2, Subhashchandra

Bhobe, has given two reports pertaining to this acquisition. As mentioned in the first report, it pertains to survey no.103/2 when the land of the said survey number was not a subject matter of the acquisition. One does not know whether the second report refers to survey no.104 or for that matter to survey no.105 of Ella village. In the first report, A.W.2, Saubhashchandra Bhobe, relied upon 4 Sale Deeds and in the second report A.W.2, Bhobe, relied upon 6 Sale Deeds and there is no explanation as to why the number of Sale Deeds differ in the said two reports. The fact remains that none of the said Sale Deeds relied upon by A.W.2, Bhobe, have been produced before the Court and on this count also his evidence deserves to be rejected. According to A.W.2, Bhobe, he had visited the acquired land first in December, 1991 and then in March, 1994. However, A.W.1, Shamsundan Bhandari has nailed the lie of A.W.2, Bhobe that he had inspected the said land in December, 1991 by stating that A.W.2, Bhobe, visited the property in the year 1994 at the time when the railway track was already laid. If that is the case, A.W.2, Bhobe, could not certainly have known what was the nature of the acquired land so as to give his opinion regarding the value of the same. The opinion given by A.W.2, Bhobe, therefore, was rightly rejected by the learned Additional District Judge.

11. As far as the income method was concerned there was no evidence led whatsoever by the Applicant except his bald statement that the income of the property was Rs.50,000/- per year and,

therefore, in our view, the reference was rightly rejected on that count also.

12. In our view, the Judgment/Award of the learned Additional District Judge cannot be faulted considering the nature of the evidence produced by the Applicant in support of his case for enhancement. The appeal, therefore, fails and is hereby dismissed. However, we leave the parties to bear their own costs.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

RD.